



February 24, 2000

Mr. Richard Talbert
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OR2000-0660

Dear Mr. Talbert:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133341.

The Weslaco Development Committee, Inc. ("WDC"), which you represent, received a request for the "terms, conditions and dollar amount of settlement" of a specified lawsuit. In response to this request you have supplied a copy of a "CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE" (the "release") to this office for review.¹ You have not asserted any exception to disclosure as grounds for withholding this responsive information. Rather, you argue that WDC is not a "governmental body" in regard to the responsive information, and hence, need not comply with the disclosure requirements of the Public Information Act, in this instance.

You acknowledge that WDC is a "governmental body" and that WDC records are therefore subject to the disclosure requirements of the Public Information Act "to the extent such records deal with the expenditure of public funds." However, you contend that the subject release is not such a record because it relates to a lawsuit which "did not concern itself with the expenditure of public funds *vis-a-vis* WDC."

Chapter 552 of the Government Code requires "governmental bodies" to make public, with certain exceptions, information in their possession. The term "governmental bodies" includes "the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds." Gov't Code § 552.003(1)(A)(x). Public funds are "funds of the state or a governmental subdivision of the state." Gov't Code § 552.003(5).

¹We note that the request for information was received by WDC on January 5, 2000, and WDC's request for decision is post marked January 19, 2000. The request for decision was therefore timely submitted "not later than the 10th business day after the date of receiving the written request" for information. Gov't Code §§ 552.301(b), 552.308.

Courts, as well as this office, have considered the scope of the Public Information Act's definition of "governmental body." In *Kneeland v. National Collegiate Athletic Ass'n*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), the United States Court of Appeals for the Fifth Circuit recognized that opinions of the Texas Attorney General do not declare private persons or businesses "governmental bodies" subject to the Public Information Act "'simply because [the persons or businesses] provide specific goods or services under a contract with a government body.'" *Kneeland*, 850 F.2d at 228 (quoting Open Records Decision No. 1 (1973)). Rather, when interpreting the predecessor to section 552.003 of the Government Code, the *Kneeland* court noted that the attorney general's opinions generally examine the facts of the relationship between the private entity and the governmental body and apply three distinct patterns of analysis:

The opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes "a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser." Tex. Att'y Gen. No. JM-821 (1987), *quoting* ORD-228 (1979). That same opinion informs that "a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a 'governmental body.'" Finally, that opinion, citing others, advises that some entities, such as volunteer fire departments, will be considered governmental bodies if they provide "services traditionally provided by governmental bodies."

Id. As the *Kneeland* court noted, when considering the breadth of the Public Information Act's definition of "governmental body," this office has distinguished between private entities receiving public funds in return for specific, measurable services and entities receiving public funds as general support. For example, Open Records Decision No. 228 (1979) considered whether the North Texas Commission (the "commission"), a private, nonprofit corporation chartered for the purpose of promoting the interests of the Dallas-Fort Worth metropolitan area, constituted a "governmental body" under the Public Information Act. Open Records Decision No. 228 at 1 (1979). The contract existing between the commission and the City of Fort Worth obligated Fort Worth to pay the commission \$80,000 per year for three years. *Id.* The contract obligated the commission to, among other things, "[c]ontinue its current successful programs and implement such new and innovative programs as will further its corporate objectives and common City's interests and activities." *Id.* at 2. Noting this provision, Open Records Decision No. 228 stated, "[e]ven if all other parts of the contract were found to represent a strictly arms-length transaction, we believe that this provision places the various governmental bodies which have entered into the contract in the position of "supporting" the operation of the Commission with public funds.

In this case, you acknowledge that WDC receives funding from the City of Weslaco. However, you assert that WDC also receives profits from land holdings, which are taxed, thereby implying that not all WDC funding is public. In determining the scope of the public nature of WDC's activities, we look to WDC's amended articles of incorporation, which state in pertinent part

This corporation is formed strictly as a civic undertaking, and the purposes and powers herein granted shall be limited in their application to rendering financial and other assistance to the economic development of the city of Weslaco and vicinity. Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purpose of the corporation.

...

Any and all profits accruing or earned shall be placed in a surplus fund and all property owned or hereafter acquired by the corporation shall be held, to be used in the furtherance of the objectives and purposes of the corporation, including the retirement of any indebtedness incurred in furtherance of the above stated purposes, or shall be donated to the City of Weslaco.

From the language of the article of incorporation we conclude that WDC does not provide specific services on a *quid pro quo* basis to the city. Further, "except to an insubstantial degree" these articles limit WDC's activities to "services traditionally provided by governmental bodies" as contemplated in the decisions noted by the *Kneeland* court. Further, we note that WDC is funded in part by city sales tax; that WDC's Board of Directors is appointed by the Weslaco City Commission; and, that the Mayor of Weslaco evidently serves as an ex-officio member of the WDC board. From the materials you submitted it also appears that WDC received considerable capital contributions from the City of Weslaco. We conclude that WDC is a "governmental body." As no exceptions to disclosure have been shown to apply to the requested information, WDC must release this information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by


filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* §. 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. . The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 133341

Encl Submitted documents

cc: Mr. Allen Essex
Valley Morning Star
/Freedom Communications, Inc.
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(w/o enclosures)